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08/058,163 05/04/93 ABRUTYN

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EXAMINER

ORE, D

PATENT DEPT.
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REC'D

ART UNIT

PAPER NUMBER

MAY 19 1994

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1203

DATE MAILED:

05/16/94

Due: 8/16/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 11/22/93 This action is made final.

A shortened statutory period for response to this action is set to expire 3 months(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.	2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948.
3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.	4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.
5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.	6. <input type="checkbox"/>

Part II SUMMARY OF ACTION

1. Claims 1 to 19 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1 to 19 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Serial No. 08/058,163

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Art Unit 1203

Applicants' request for clarification of the record, as to the prosecution of original application Serial No. 07/053,609, now U.S. Patent No. 4,855,127, is noted.

Applicants' request for clarification as to why the term "solid" was inserted in the allowed claims by the Examiner of record, Dale R. Ore, is noted and clarification appears below:

The Attorney of record, Mr. John Lezdey, after his response of December 15, 1988, on March 8, 1989, initiated as telephonic interview in an attempt to have application 07/053,609 allowed. After a discussion between Mr. Lezdey and the above Examiner, addressed to the aforementioned response in which applicant indicated, that the claims were allowable over the Ciba-Geigy reference. Applicant indicated that the reference was drawn to liquid functional material while the instant materials are solids. See below for excerpts from said response which indicate the same.

"The present claims are now directed to a cross-linked hydrophobic comb-like polymer lattice having a pheromone entrapped within the polymer lattice by polymerizing the monomers of the polymer and the pheromone in situ.

Claim 2 has been incorporated into claim 1.

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The Rejection Under 35 USC 103

Reconsideration is requested of the rejection of the claims under 35 USC 103 as being unpatentable over the Ciba-Geigy reference.

Ciba-Geigy discloses a solid polymeric matrix wherein the functional material is incorporated into the polymer matrix by the phenomena of impregnation. Ciba-Beigy first prepares the polymer matrix. The polymer is cut into strips and placed in contact with a liquid which contains the functional material. The functional material then enters the polymer by means of absorption.

In contrast, there is no absorption process involved in the entrapment of the functional material in the present invention. Applicants polymerize the monomers of the polymer matrix together with the pheromone in situ. As a result of the polymerization entrapment, the release of pheromone vapors occurs under an entirely different mechanism. Applicants' functional material can be solids or powders and need not be in solution. In contrast, only liquids can be utilized to create the system of the reference since absorption is necessary."

Mr. Lezdey agreed to insert the term "solid", before pheromone, because of his discussion of the Ciba-Geigy reference discussed, supra and the disclosure in the instant specification of Serial No. 07/053,609, on page 25, lines 21 and 22, disclose

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solid pheromones samples which are cut into plugs or cylinders. Further, the last line on page 25 indicates that the pheromones tested on page 26, in Table II are also solid, since, the specification indicates, that they were subjected to the same procedure outlined in lines 21 and 22. It seems obvious after a careful perusal of applicants' specification, ^{which} clearly shows, that liquid pheromones could not be cut into plugs or cylinders.

The reissue oath or declaration filed in this application remains defective for the reasons, set forth in paragraphs 1 and 2, on page 2, of the Office action of November 12, 1993 and the discussion, supra. Further, the declaration set forth no test data or other evidence which indicates, that the pheromones of the specification are liquid.

Claims 1 to 19 remain, under rejection under 35 U.S.C. 112 (1st and 2nd paragraphs) for the reasons, of record set forth in paragraphs 4 and 5, of the previous Office action. Moreover, a careful reading of the disclosure in the specification clearly shows the sufficiently supported pheromones to be solid. Applicant's urging, that column 9, line 3 supports water insoluble liquids or solid pheromones is not convincing.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that

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the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-19 are rejected, under 35 USC 103, as being unpatentable over Ciba-Geigy, cited by applicant in parent application Ser. No. 08/053,609. The Ciba-Geigy patent teaches the use of a solid entrapped insecticide as old in the prior art. The patent also shows that it is known to incorporate odorants and microbiocides in said polymers. The instant composition is obvious and within the skill of the artisan of ordinary skill. The use of a different insect attractant and pesticide in a polymer entrapment is obvious in view of ^{the} Ciba-Geigy disclosure which shows, that it is known to use polymer entrapments to deliver such agents. Accordingly, the instant invention is obvious.

No claim is allowed.

A facsimile center has been established in Group 1200, room 3C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or 305-3592.

ORE:jd
April 22, 1994

Dale N. O.
DALE N. O.
PRIMARY EXAMINER
ART UNIT 1203